IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

Crl.MC.No. 3305 of 2007()

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AGAINST THE ORDER DATED 18/08/1988 IN CRRP. 89/2002 IN
SC.14/1988 of ADDL.SESSIONS COURT, THALASSERY
MC.22/2002 of ADDL.CHIEF JUDICIAL MAGISTRATE COURT, THALASSERY

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PETITIONER: COUNTER PETITIONER/REVISION PETITIONER

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NANISSERI MUKUNDAN, S/O.KUNHIRAMAN,
TODDY TAPPER, PADAPPAYIL HOUSE,
P.O.NARATH, KANNUR DISTRICT.

BY ADV. SRI.K.V.SOHAN
SMT.SREEJA SOHAN.K.

RESPONDENTS: PETITIONER/RESPONDENT

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M.USHA, D/O.KANNAN,
TAILOR, MADAPPURAKKAL, P.O.NARATH,
KANNUR DISTRICT.

BY ADV. SRI.SANTHOSH PODUVAL (AMICUS CURIAE)
PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 04/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J**

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**Crl.M.C.No.3305 of 2007**

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**Dated this the 4th day of December, 2007**

**O R D E R**

Petitioner is the counter petitioner in a cliam filed under Section 125 Cr.P.C. The learned Magistrate as also the learned Sessions Judge in revision have come to the conclusion and have issued a direction under Section 125 Cr.P.C to the petitioner to pay maintenance @ Rs.300/- per mensem to the respondent, his divorced wife.

2. The marriage and divorce are admitted. Divorce was secured by the petitioner through Court on the ground that the claimant wife was guilt of cruelty against him, she having caused the death of 4 minor children born in the wedlock between the petitioner and the claimant.

3. The claim under Section 125 Cr.P.C was sought to be resisted on the short and sole ground that the claimant is disentitled to claim maintenance as the marital tie was dissolved on the ground of cruelty on the part of the claimant to the petitioner. Both courts came to the conclusion that the petitioner

is liable to pay matrimonial maintenance to the claimant and that the defence set up by him cannot be accepted.

4. To me it appears that it is too late in the day for the petitioner to raise this contention. The question has been considered on many occasions by this Court and the Supreme Court and had held very clearly and beyond the pale of controversy that the defences which are available to resist a claim of the wife prior to divorce are certainly not valuable to resist the claim of a divorced wife. It is unnecessary to advert to all the precedents cited. All the decisions in one voice speak that Section 125 (4) Cr.P.C is not applicable to the case of a divorced wife notwithstanding the fact that the definition of the wife in Section 125 Cr.P.C includes the divorced wife also. I need only refer to the following passage in **Moni v. Sujatha** [1986 K.L.T 257], where His Lordship Justice Padmanabhan has spoken on this aspect in the following words:

> "The questions whether during subsistence of the marriage she deserted the husband or was cruel towards him or whether her cruelty and desertion were the grounds for dissolution of marriage are matters

absolutely foreign to the scope of inquiry when her claim for maintenance in her new capacity as divorced wife is being considered."

5. The question had come up for consideration before the Full Bench in **Mariyumma v. Mohammed Ibrahim** [1978 K.L.T 573]. The Supreme Court had also considered the question in **Rohtash Singh v. Ramendri** [2000(3) SCC 180].

6. I think it unnecessary to advert to the precedents in any greater detail. The question according to me is concluded and does not admit any doubt. The learned counsel for the petitioner confronted with these decisions falls back on the maxim of law that no man shall take advantage of his own wrong (Nullus Commodum Capere Potest De Injuria Sua Propria) and contends that the courts had not considered the applicability of this maxim while coming to the conclusion that a divorced wife notwithstanding the fact that her cruelty was the ground of divorce is still entitled to claim maintenance.

7. I find absolutely no merit in this contention. The applicability of the maxim will certainly stand excluded when there is specific stipulation in the statutory provisions to confer

the benefit on a claimant. Whatever be the ground of divorce, a divorced wife is entitled to claim maintenance under Section 125 Cr.P.C after the amendment in 1973. The statutory right to claim maintenance cannot obviously be defeated by falling back on and pressing into service such a legal maxim which in the circumstances is totally inapplicable.

This Crl.M.C is, in these circumstances, dismissed.

**(R.BASANT, JUDGE)**

rtr/-